



BARRISTERS SOLICITORS

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114261-002-FSK

January 18, 2019

VIA EMAIL (complaints@albertaelectioncommissioner.ca)

Election Commissioner of Alberta
Office of the Election Commissioner
805 - 10011 109 Street NW
Edmonton, AB
T5J 3S8

Attention: Lorne R. Gibson

Dear Sir:

Re: Investigation into Billboard posted by Rebel News Network Ltd.

We are legal counsel to The Rebel News Network Ltd. ("Rebel Media"). We were advised that you received a complaint about a billboard on Highway 2 near Innisfail, reading:

"40% of Grade 9 Students Failed Provincial Exams – Alberta can do Better than David Eggen www.FireEggen.ca."

We received your decision (the "Decision") about the complaint on January 16, 2019. In it, you conclude that Rebel Media has violated the *Election Finances and Contributions Disclosure Act*, RSA 2000, c E-2 (the "Act"), finding:

The message posted on the billboard appears to constitute political advertising because it opposes a member of the Legislative Assembly and was in place prior to December 2018 (November 23, 2018 to November 30, 2018).

...

According to the legislation, Rebel Media is required to be registered as a third party advertiser with Elections Alberta.

Without first seeking any input from us, you indicate that you intend to assess an administrative penalty in the amount of \$5,500. You also state that your preliminary penalty

assessment is based upon your consideration of "... all the information obtained during the investigation" without providing any of that information to us, or even disclosing what it is.

It is troubling that your Decision convicting Rebel Media was issued despite assurances that Rebel Media would first be given a reasonable opportunity to respond to the allegations against it. We note the following:

1. On September 15, 2017, Elections Alberta advised Rebel Media that it "may be engaging in third party political advertising by the [Act]". We responded with a letter dated November 7, 2017 to address the general allegation. We received no reply to that letter.
2. On December 17, 2018, you advised Rebel Media that an investigation had been commenced concerning "actions with respect to an alleged violation on November 23-30, 2018 of section 9.1(1) and section 44.8(1) of the [Act]."
3. We replied by letter on December 20, 2018 confirming our intention to provide a written response.
4. On January 9, 2019, we wrote again to your office requesting a copy of the complaint and further particulars. Later that same day, the Investigations Manager at your office sent us an email confirming receipt of our correspondence, stating "Please note that I am working away from the office until January 15, 2019. We will provide you with a more detailed response as soon as possible." We therefore expected to receive those particulars sometime after January 15, 2019.
5. It appears that others were told about your Decision before it was communicated to Rebel Media. On January 14, 2019, a Senior Investigator with Elections Alberta ordered Spot Ads Inc. (the operator of the billboard which is the subject of this investigation), to either remove or revise the billboard, writing that "The billboard has been in contravention since November 2018."
6. On January 16, 2019, we received the Decision by email. The Decision is dated January 14, 2019.
7. To date, we have not been provided with a copy of the complaint made against Rebel Media or your promised detailed response, referred to in your office's January 9, 2019 email.

In a democracy, reasonable people can have diverse views and different perspectives on important issues, including education. In our view, the expression of an editorial perspective aimed at promoting public debate should not be punished by the government of the day, especially without first affording Rebel Media a reasonable opportunity to see the complaint

January 18, 2019

against it, and then present its views. We note that, pursuant to section 44.97(3) of the Act, "The Election Commissioner shall not make any adverse finding against a person or organization unless that person or organization has had reasonable notice of the substance of the allegations and a reasonable opportunity to present his or her or its views."

Finally, you provide 30 days for us to respond to your suggestion that a fine of \$5,500 is an appropriate penalty. Given that this also happens to be the amount of time within which we must file an appeal of your Decision, we instead intend to file an appeal to the Court of Queen's Bench of both Rebel Media's conviction and the \$5,500 penalty.

Yours truly,

REYNOLDS MIRTH RICHARDS & FARMER LLP

PER:

A handwritten signature in black ink, appearing to read "F. Kozak", written over the printed name "FRED KOZAK, QC".

FRED KOZAK, QC

FSK/mes